IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 58 OF 2007

CENTRAL BANK OF INDIA AND
CONSTITUTED ATTORNEY SHRI BACHARAM
LAXMAN PATIL ... Appellant

Versus

SHRI VENKATESH KESHAV PRABHU
DESSAI, SANGUEM GOA. ... Respondent

Mr. Sudin M.s. Usgaonkar, Advocate for the appellant.
Mr. V.A. Lawande, Advocate for the respondents.

Coram:- F.I. REBELLO, J.

Date:- 22nd November, 2007

P.C.

This appeal is filed by the bank. The respondents filed the suit against the appellant contending that they had charged him interest over and above the rate which was agreed in the terms of the loan obtained by him. The Trial Court after considering the evidence on record decreed the suit in favour of the respondent herein and directed the appellant herein to pay a sum of Rs.32,139/- along with interest at the rate of 14% from 1.6.1999 till the date of decree. The bank aggrieved preferred appeal before the District Court, which after fixing points for determination partly allowed the appeal in as much as reduced the rate of interest to 6% on the principal amount of Rs.32,139/-. These are the orders which the subject matter of this appeal.

On behalf of the appellant the learned counsel submitted that the respondent while applying for the loan had to furnish declaration. It is submitted that the respondent did not fill in the declaration, as earlier the respondent had taken a loan also for the same purpose. Attention is next invited to the Circular dated 13.6.1995, clause (i) which sets out that all

borrowal accounts over Rs.2.00 lakhs where PLR is presently being charged should now be charged PLR + 0.5% (exclusive of tax). Attention is also invited to the declaration form wherein it is set out that it will be for the bank to disqualify for receiving any credit facilities in case it is proved that outside borrowings are made and that the declaration contains any misrepresented facts.

From the evidence on record, it has come that the appellant wrote to the respondent contending that they had to pay higher interest in terms of directions received by the Higher Officers. In response dated 14.4.1997 he has denied his liability to pay any further interest.

In spite of this reply denying his liability, it appears that the bank charged him interest at the additional rate which was paid by the respondent. On discovering that he had been wrongly charged higher interest, he filed the suit.

If it is the contention of the appellant that the respondent was not entitled to the loan, the same would amount either to misrepresentation or fraud whereupon it was open to the bank to recall the loan. Under a bonafide mistake and even after objection the interest was paid as demanded. That by itself cannot confer the right on the appellant to vary the terms entered into by the respondent and the appellant.

The learned counsel stated that the declaration and the circular have not been properly construed. In my opinion, in the absence of a contract the Appellant could not undoubtedly vary the contractual terms and charged higher interest. Hence as there being no question of law, second appeal is not maintainable. Consequently the appeal stands disposed off.

The amount which was deposited be paid to the respondent in satisfaction of his claim and if interest is also paid, the same also be paid in the hands

of the respondent.

F.I. REBELLO, J.

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